

(b) *Assertion of privileges.* Any applicable privilege or protection under law may be asserted in response to a request or demand for testimony or disclosure of IRS records or information, including, but not limited to, the following—

- (1) Attorney-client privilege;
- (2) Attorney work product doctrine; and

(3) Deliberative process (executive) privilege.

(c) *Non-IRS matters.* If any person makes a request or demand for IRS records or information in connection with a non-IRS matter, authorizing officials shall take into account the following additional factors in responding to the request or demand—

- (1) Whether the requester is a Federal agency, or a state or local government or agency thereof;
- (2) Whether the demand was issued by a Federal or state court, administrative agency or other authority;
- (3) The potential effect of the case on the administration of the internal revenue laws or any other laws administered by or concerning the IRS;
- (4) The importance of the legal issues presented;
- (5) Whether the IRS records or information are available from other sources;
- (6) The IRS's anticipated commitment of time and anticipated expenditure of funds necessary to comply with the request or demand;
- (7) The number of similar requests and their cumulative effect on the expenditure of IRS resources;
- (8) Whether the request or demand allows a reasonable time for compliance (generally, at least fifteen business days);
- (9) Whether the testimony or disclosure is appropriate under the rules of procedure governing the case or matter in which the request or demand arises;
- (10) Whether the request or demand involves expert witness testimony;
- (11) Whether the request or demand is for the testimony of an IRS officer, employee or contractor who is without personal knowledge of relevant facts;
- (12) Whether the request or demand is for the testimony of a presidential appointee or senior executive and whether

er the testimony of a lower-level official would suffice;

(13) Whether the procedures in § 301.9000-5 have been followed; and

(14) Any other relevant factors that may be brought to the attention of the authorizing official.

[T.D. 9178, 70 FR 7397, Feb. 14, 2005]

**§ 301.9000-3 Testimony authorizations.**

(a) *Prohibition on disclosure of IRS records or information without testimony authorization.* Except as provided in paragraph (b) of this section, when a request or demand for IRS records or information is made, no IRS officer, employee or contractor shall testify or disclose IRS records or information to any court, administrative agency or other authority, or to the Congress, or to a committee or subcommittee of the Congress without a testimony authorization. However, an IRS officer, employee or contractor may appear in person to advise that he or she is awaiting instructions from an authorizing official with respect to the request or demand.

(b) *Exceptions.* No testimony authorization is required in the following circumstances—

- (1) To respond to a request or demand for IRS records or information by the attorney or other government representative representing the IRS in a particular IRS matter;
- (2) To respond solely in writing, under the direction of the attorney or other government representative, to requests and demands in IRS matters, including, but not limited to, admissions, document production, and written interrogatories to parties;
- (3) To respond to a request or demand issued to a former IRS officer, employee or contractor for expert or opinion testimony if the testimony sought from the former IRS officer, employee or contractor involves general knowledge (such as information contained in published procedures of the IRS or the IRS Office of Chief Counsel) gained while the former IRS officer, employee or contractor was employed or under contract with the IRS; or
- (4) If a more specific procedure established by the Commissioner governs the disclosure of IRS records or information. These procedures include, but

are not limited to, those relating to: procedures pursuant to § 601.702(d) of this chapter; Freedom of Information Act requests pursuant to 5 U.S.C. 552; Privacy Act of 1974 requests pursuant to 5 U.S.C. 552a; disclosures to state tax agencies pursuant to section 6103(d) of the Internal Revenue Code (Code); and disclosures to the United States Department of Justice pursuant to an ex parte order under section 6103(i)(1) of the Code.

(c) *Disclosures of IRS records or information with or without testimony authorization must be permitted under other applicable law.* Any disclosure of IRS records or information that is otherwise permissible under this section must not be prohibited under applicable law. For example, in a case in which returns and return information may be disclosed, the disclosure must be authorized under section 6103, even if any required testimony authorization is obtained. If tax convention information (as defined under section 6105) may be disclosed, in deciding whether the disclosure is authorized, the authorizing official must coordinate the disclosure with the U.S. Competent Authority.

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**§ 301.9000-4 Procedure in the event of a request or demand for IRS records or information.**

(a) *Purpose and scope.* This section prescribes procedures to be followed by IRS officers, employees and contractors upon receipt of a request or demand in matters in which a testimony authorization is or may be required.

(b) *Notification of the Disclosure Officer.* Except as provided in paragraphs (c), (d), and (e) of this section, an IRS officer, employee or contractor who receives a request or demand for IRS records or information for which a testimony authorization is or may be required shall notify promptly the disclosure officer servicing the IRS officer's, employee's or contractor's geographic area. The IRS officer, employee or contractor shall await instructions from the authorizing official concerning the response to the request or demand. An IRS officer, employee, or contractor who receives a request or demand in one of the following matters should not

notify the disclosure officer, but should follow the instructions in paragraph (c), (d), or (e) of this section, as applicable:

(1) United States Tax Court cases.

(2) Personnel matters, labor relations matters, government contract matters, matters related to informant claims or matters related to the rules of *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) (Bivens matters), or matters under the Federal Tort Claims Act (FTCA).

(3) IRS congressional matters.

(c) *Requests or demands in United States Tax Court cases.* An IRS officer, employee or contractor who receives a request or demand for IRS records or information on behalf of a petitioner in a United States Tax Court case shall notify promptly the IRS Office of Chief Counsel attorney assigned to the case. The IRS Office of Chief Counsel attorney shall notify promptly the authorizing official. The IRS officer, employee or contractor who received the request or demand shall await instructions from the authorizing official.

(d) *Requests or demands in personnel, labor relations, government contract, Bivens or FTCA matters, or matters related to informant claims.* An IRS officer, employee or contractor who receives a request or demand, on behalf of an appellant, grievant, complainant or representative, for IRS records or information in a personnel, labor relations, government contract, Bivens or FTCA matter, or matter related to informant claims, shall notify promptly the IRS Associate Chief Counsel (General Legal Services) attorney assigned to the case. If no IRS Associate Chief Counsel (General Legal Services) attorney is assigned to the case, the IRS officer, employee or contractor shall notify promptly the IRS Associate Chief Counsel (General Legal Services) attorney servicing the geographic area. The IRS Associate Chief Counsel (General Legal Services) attorney shall notify promptly the authorizing official. The IRS officer, employee or contractor who received the request or demand shall await instructions from the authorizing official.

(e) *Requests or demands in IRS congressional matters.* An IRS officer, employee or contractor who receives a request or